TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE Transcriber's Office

January 28, 1999 LB 24

circumstance in an application of a new Supreme Court decision in Betz v. Betz of this last year. It's easiest to understand the Betz v. Betz rule first and then to see what happened in Paul's case, because it was an application of the principle of this new decision. In the Betz case, there was a guardian ad litem for a child. Now guardian ad litem is appointed by a court -- could be a lawyer; doesn't have to be a lawyer -- to look out for the well-being of the child. They're to investigate facts, learn where the welfare of the ward lies, and to report these facts to the appointing court. They are a source of information. On occasion, they're called to the stand to give testimony about what they've learned. Because that's the case, the quardian ad litem function is different than an attorney function on behalf of the child. A guardian ad litem is to learn, investigate, discover facts, and learn where the welfare of the child is, but may be called upon to be a witness on that child's behalf. An attorney, on the other hand, represents their interests in court in an adversarial fashion. They call witness, they examine witnesses, they file pleadings. And the client, I'm sorry, the attorney-client relationship, which includes zealous representation, is different than the guardian ad litem and minor relationship, which is where the guardian ad litem is to discover the best interests. In fact, the lawyer's supposed to represent their interests zealously, but it doesn't even have to be their best interests. So the two, said the court, are different and, if you have a lawyer guardian ad litem, they can't file actions on behalf of the minor child. They have a different kind of a relationship. They have to get a second lawyer to represent them in the attorney-client relationship. Look, we might not like it, we might think it's crossing, you know, t's and dotting i's and going beyond the commonsensical, but it is a Supreme Court decision and we aren't going to be able to reverse this one. These are matters under the purview of the court. This is the definition of an attorney-client relationship and of a guardian ad litem, which is an equitable power of the court which we don't even have to grant to the court. So we don't have power to change Betz v. Betz. Paul Conley's case: He has a mentally retarded woman but of age of majority. Requires, under the equitable power of the court, a guardian ad litem to determine her best interests because she wanted a divorce. She was married. She had reduced mental capacity. The court assigned a guardian ad litem. In